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[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

December 19, 1939.

IN RE WAN ENG KIAT DECEASED

and

IN RE ORDER 52 RULE 1 OF THE RULES OF THE SUPREME COURT, 1934.

[SINGAPORE ORIGINATING SUMMONS No. 144 of 1939]

Will—improvements—repairs—whether payments chargeable against corpus or income.

By his Will a testator directed that the income of his residuary estate was to be applied by his trustees towards payment of all expenses in the administration of the estate and towards payment of all assessments, rates, taxes, quit rents, insurance and keeping the buildings in a proper state of repair.

Held, (i) that the testator's intention as inferred from the terms of the particular will was the governing factor and that expenditure for sanitary installations was to be charged against income not against corpus; (ii) that legal expenses incurred by the trustees in the course of their general administration of the estate should also be paid for out of income; (iii) but that backlane charges in respect of some houses belonging to the estate should not be charged against income but should be paid for out of capital.

Held also, that "to keep buildings in a proper state of repair" means to keep them in such a state of repair as to keep them fit for their ordinary use and if the law requires sanitary installation to be put in dwelling houses this work though it is not an improvement is also in the nature of a repair.

Cases referred to:—

(1) *Bowes v. Strathmore,* 8 Jur. 92.

(2) *Chang Kam Long v. Busfield,* (1933) S.S.L.R. 424, 2 M.L.J. 293.

(3) *In re Earl of Stamford and Warrington,* (1916) 1 Ch. 404.

(4) *Re Jackson,* 21 Ch. D. 786.

(5) *Re Syed Hashim bin Kassim deceased* (1933), S.S.L.R. 160; 5 M.L.J. 248.

(6) *In re Teissier's Trusts* (1893), 1 Ch. 153.

(7) *Re the trusts of the Will of Wan Eng Kiat, deceased* (1931), S.S.L.R. 57.

ORIGINATING SUMMONS.

P. Sammy for applicant.

R. L. Eber for Deputy Registrar representing interest of the class of persons ultimately entitled to the residuary estate.

P. Hoalim for Wan Boon Lim representing persons entitled to income of residuary estate.

The facts and arguments sufficiently appear from the Order.

McElwaine, C.J.—The testator devised and bequeathed his residuary estate to his trustees upon trust until twenty one years after the death of Wan Boon Seng to receive the rents and profits and income thereof and manage the immoveable property and every part thereof as they may think proper with power to demise or let the same upon such rents and subject to such conditions as the trustees shall think proper "and with all other powers expedient and desirable for the management of the said immoveable estate and to invest my ready moneys on mortgages of real properties in the Island of Singapore and to apply the net rents and profits and income of my said residuary estate in the first place in and towards payment of all expenses incurred by my trustees in the administration of my estate and towards payment of all assessments, rates and taxes, quit rents, and the expenses of insuring and keeping all my buildings in a proper state of repair." The testator then directed certain bequests to be paid.

This summons raises three questions:

(1) Whether the expenditure on sanitary installation at No. 63 Japan Street, No. 126 Telok Ayer Street and at No. 18 North Canal Road shall be charged to the corpus of the residuary estate or to the income thereof.

(2) Whether back-lane charges in respect of 126 Telok Ayer Street, No. 18 North Canal Road and 63 Japan Street should be charged to corpus or income.

(3) Whether legal expenses incurred by the trustees in the course of general administration should be paid out of corpus or income.

This Court has decided that the devise of the two houses 63 Japan Street and 126 Telok Ayer Street (then 202 Telok Ayer Street) was void: *In re The Trusts of the Will of Wan Eng Kiat deceased*(7).

Consequently, these houses fall into the residuary estate.

Mr. Hoalim said that the improvements were permanent and so were chargeable to capital. He cited *Re Syed Hashim bin Kassim deceased*[5] and *Chang Kam Long v. Busfield*[2].

It was not denied that the improvements were permanent but Mr. Eber contended that the testator's intention as it is to be inferred from this particular will, is the governing factor; and that that was that all these charges were to be paid out of income.

I think this view is correct. The trustees are to "manage" the immoveable property and power to "manage" has been held in *Bowes v. Strathmore*[1] to confer a power to rebuild and *a fortiori* a power to effect necessary improvements.

The testator directed the trustees to apply the income of the residuary estate towards payment of all expenses in the administration of the estate and towards payment of all assessments, rates, taxes, quit rents, insurance and keeping the buildings in a proper state of repair. These are particular incidents of management and it appears to me that all expenses of management were intended bv the testator to be paid out of income and that the value of the corpus should not be depreciated.

Mr. Sammy for the Trustees referred me to *Re Jackson*[4] a case of salvage which the present is not. He also cited *In re De Teissier's Trusts*[6] and *In re Earl of Stamford and Warrington*[3] cases under the Settled Land Acts. The case before me is for the construction of a will and no application under the Settled Estates Ordinance is before me.

The *Earl of Stamford's case* has, however, a bearing on this case as the will contained a clause empowering the trustees to pay all the costs and expenses of insurance, repairs and other outgoings, and all other costs and expenses of care, management, cultivation and improvements out of the rents and profits, and it was held that this clause did not authorise improvements under section 25 of the Settled Land Act 1882 or under section 13 of the Settled Land Act 1890 to be effected out of the income.

The case turned on the meaning of the word "improvements" and Younger J. thought that the word had not the extended significance of the word in the Settled Land Acts and that it meant improvements of an annual or recurring character.

The word "improvement" does not occur in the will of Wan Eng Kiat.

But as I understand *In re Earl Stamford and Warrington* the real decision lies in the words at pages 421–2 "as to the future, improvements under the Settled Land Act which the Trustees consider improvements of the inheritance may properly be paid for out of capital moneys, notwithstanding any power they as trustees of the settlement may possess to discharge them out of income, if, having regard to the interests of all persons entitled under the settlement, they are of opinion that they should be so paid."

In all cases of interpretation of Deeds and Wills the language of the document under consideration is more important than decisions on differently worded documents, and it appears to me that "to keep buildings in a proper state of repair" means to keep them in such a state as to keep them fit for their ordinary use and if the law requires sanitary installations to be put in dwelling houses, this work, though it is an improvement, is also in the nature of a repair.

The back-lane charges appear to me to be on a different footing and not to be included in the purposes for which income can be applied under the will. I need not consider whether they are in the nature of incumbrances under Section 27 of the Settled Estates Ordinance.

The legal expenses necessarily incurred in connection with the administration of the estate appear to me to come under the power given by the will to the trustees and can be paid out of income.

I answer the questions raised:

(1) The expenditure on sanitary installations at house No. 63 Japan Street of $350/-; at house No. 126 Telok Ayer Street of $345/- and at house No. 18 North Canal Road of $321.20 shall shall be charged to the income of the residuary estate.

(2) The back-lane charges of $665/- and $2,070/- and $619.08 in respect of houses Nos. 126 Telok Ayer Street and No. 18

North Canal Road and 63 Japan Street shall not be charged to the income of the residuary estate, but shall be paid for out of capital.

(3) The legal expenses necessarily incurred by the trustees in the course of the general administration of the estate shall be charged to the income of the residuary estate.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.A.

January 18, 1940.

IN THE ESTATE OF SEVATHA VAPPOO MARICAR OTHERWISE CALLED KAVENA SAYNA SAVATHA VAPPOO MARICAR DECEASED.

[SINGAPORE PROBATE No. 112 of 1938]

General pecuniary legacy—whether charged on the whole property or only on property not specifically bequeathed—residuary legatees—whether devise specific.

A testator directed that the executor of his will shall deduct from his inheritance Rs. 5,000/- for the purchase of a house and land in Nagour for the benefit of a legatee. The testator appointed as his residuary legatees, 3 nephews and devised to them his share in certain immoveable property in Singapore. It was contended that the devise of immoveable property was a specfic devise and accordingly the pecuniary legacy was not charged upon it.

Held, upon the wording of this will that the mere fact that a testator had enumerated some specific things in a gift of residue did not make the gift of those things specific and that by the use of the word "consequently" preceding the so-called specific gift and succeeding the residuary gift the testator had indicated that he intended the residuary legatees to receive the gift in their character of residuary legatees.

Cases referred to:—

(1) *Gainsford v. Dunn*, L.R. 17 Eq. at p. 408.

(2) *Greville v. Brown*, 7 H.L.C. p. 689.

(3) *Higgins v. Dawson*, (1902) A.C. at p. 12.

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John Laycock for Administrator.

S. C. Goho for Shaik Abdoolcader Maricar.

M. J. Namazie for Pattoumalle.

Cur. Adv. Vult.

Terrell, J.A.—The testator Sevatha Vappoo Maricar died on the 31st December, 1930, possessed of certain property in India and a two-fifth interest in certain houses in Victoria Street, Singapore, which were bequeathed to him by the will of Hamidunachial. The applicant is the administrator with will annexed of the Singapore estate. The will was executed in Karikal in French India and a translation into French was made by a notary in Karikal. This document was translated into English by the French Consulate in Singapore, and a copy of the translation into English forms part of the grant of Letters of Administration by this Court and is the only document which the Court can look at for the purpose of construing the will.

The material parts of the will are as follows:—

> "I have no posterity; my executor, Goulamougaidinesaib, son of Vanasaibmaricar, Chulia by caste, landowner, fifty-four years old staying at Grand'Aldee, shall deduct from my inheritance a sum of five thousand rupees; with that sum of money he shall buy a house in Nagour and a piece of ground to the name and for the profit of Pattoummalle, daughter of Adamsaib, Chulia by caste, without profession, staying in Nagour and who takes care of me; the purchase to the name of Pattoummalle must be done in one year and she shall possess the estate and dispose of it in full ownership with faculty of giving and alienating;
>
> I choose as my residuary legatees my nephews: (1) Checkabdoulcadmaricar (2) Mougamadalimaricar (3) Issoupasaibmaricar, three of them sons of my eldest brother, Mougamadoucossemaricar; consequently, my said legatees shall have my part on shops No. 102, 103, 104, 105, 106, situated in Singapore, Victoria Street, and on the house situated in Karikal, ancient Tranquebar Street, No. 101; and they shall also have the land called "Goulousambinyammallemaney", as well as all my wealth, rights and species; the said Pattoumalle shall have the ownership of all furniture and utensils existing in my house, which the said Pattoumalle and myself occupy in Nagour; on the twenty-second of every lunar month Pattoumalle shall recite prayers in honour of Zabarsadikandavar;"

The short point at issue is whether the gift of 5,000 rupees is charged on the whole estate or whether it is charged only on any property of the testator which may not have been specifically bequeathed or devised.

It is a golden rule that an instrument should be construed according to the natural meaning which the words bear in the instrument in which you find them (*per* Lord Davey in *Higgins v. Dawson*[3]). To my mind the words of the instrument are perfectly plain. The executor is directed to deduct from "my inheritance", (which I take to mean nothing more than the